

Personal injury and other settlements

Lawyers who represent clients in personal injury matters, as well as any other matters in which a settlement is received, must avoid simultaneous deposits and disbursements of settlement proceeds. A deposit may take several days to a week to actually clear. Making disbursements prior to, or on the day of a deposit will result in a temporary conversion of funds belonging to another client, an overdraft of the trust account, or both. While many banks will provide availability of funds by the next business day, not all banks will do so. Most banks defer the recording of transactions on Saturdays to the following Monday. However, even during the business week, transactions may begin being posted to the next business day as early as 2:00 p.m. As a result, a check deposited at 3:00 p.m. on Monday may not be available until Wednesday; whereas, a check deposited at 10:00 a.m. on Monday may be available for disbursement on Tuesday.

Lawyers should avoid making simultaneous deposits and disbursements from trust accounts. Furthermore, a disbursement should never be made until the source of funds from which that disbursement will be made has been credited to the trust account and is "available for disbursement" pursuant to the fund availability policies of your financial institution. OLR recommends that lawyers familiarize themselves with their financial institution's fund availability policies.

In order to avoid problems with clients at the time of settlement, OLR recommends that lawyers begin educating clients regarding settlement procedures at the outset of the representation. Clients need to be notified well in advance of the lawyer's receipt of a settlement, that the client will be required to endorse the settlement check, and that the lawyer will not be able to simultaneously disburse a check to the client. The settlement check will have to be deposited into the lawyer's trust account, and clear, prior to being disbursed to the lawyer, the client and any 3rd parties with an interest in the settlement. Caution the client that, if an out-of-state check is involved, the funds may take longer than the usual one to two days to clear.